

And in the late case of *Ulrich vs. Dreyer*, 2 Watts, 303, several *fi. fas.* issued against the same defendants on same day, but at different hours, and the money was decreed to the executions in the order of *time* they came to the sheriff's hands. This decision was under our act of 1772, and hence is directly analogous to the case under consideration. And the Court assimilated it to seizure creating a lien at an earlier period of the day, than an act of bankruptcy, which gives priority to the former, and conceives a distinction between this and liens on real estate; the former being from the *time*, and the latter from the *date* which can only be shown by the record. Hence one may be ascertained by parol, and the other by the record itself, and therefore the analogy is wanting between the lien of a judgment and of a *fi. fa.* *Metzler vs. Kilgore*, 3 P. R. 245.

Upon principle, then, as well as authority, the priority here must be given to the attachment first levied or executed. Had they been simultaneous they must have been paid *pro rata*.

Decree accordingly.

Note.—This case was subsequently taken to the Supreme Court, on appeal, and affirmed.—Reporter.

ABSTRACT OF RECENT ENGLISH DECISION.

GIBSON vs. SMALL.¹

Time policy in the usual form on the good ship "The Susan," lost or not lost, in port and at sea, in all trades and services whatsoever and wheresoever, during the space of twelve calendar months, commencing on the 25th September, 1843, and ending on the 24th September, 1844. To an action on the policy, the Underwriter pleaded that the ship was not, at the time of the commencement of the risk in the policy mentioned, nor at the making of the said insurance, nor on the 25th September, 1843, seaworthy. *Held*, affirming the decision of the Exchequer Chamber, (15 Jur. 325,) which reversed the decision of the Court of Queen's Bench, (14 Jur. 368,) that the plea was bad in law.

In a voyage policy the law implies a condition of seaworthiness, but no such condition is implied in regard to time policies.

Semble—"If, however, a ship be about to sail on a particular voyage; and a time policy be effected instead of a voyage policy, I think, as at present advised, that the condition of seaworthiness at the commencement of the voyage would be implied."—Per Lord St. Leonards.

Sed contra—"As at present advised, I should decide against the implied condition in all cases of time policies, and should be glad if it were understood, that in all voyage policies there is, and in no time policies framed in the usual terms is there, a condition of seaworthiness implied."—Per Lord Campbell.

¹ 17 Jurist, 1131. In the House of Lords, before the LORD CHANCELLOR, (Lord St. LEONARDS,) Lord CAMPBELL, and other Lords, with the assistance of the Judges.